CF0000062106

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IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P.

Criminal Appeal No. 3436 /1999

Appellant : Dashrath S/o Milap Dhobi, aged about 30 years, r/o Chandrapur district Bilaspur.
In Jail

-Versus-

Respondent : State of Madhya Pradesh through District Magistrate, Raigarh.

(1647) 23/12/99
Filed on ..... by Shri A.D. Avasthi Advocate

R/c A.R.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-22

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आदेश पत्रक

मामला क्रमांक Cr.A. NO. 3436/99 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**Division Bench:-**

**Hon'ble Shri L. C. Bhadoo &**
**Hon'ble Shri V.K. Shrivastava, JJ.**

**27-2-2006**

Shri H. S. Patel, counsel for the appellant.

Shri J.D. Bajpaee, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

**Per L. C. Bhadoo J**

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 20th November 1999 passed by learned 2nd Additional Sessions Judge, Raigarh in S.T. No.102/95 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year. He has challenged the same in this appeal.

Case of the prosecution, in brief, is that on 26-3- 95 Govind gave a Dehati Nalishi (Ex.-P/18) in the Police Station Raigarh to the effect that today at about 11 a.m. he was going to Raigarh market, on the way he saw that one person was attacking a child with the stone. On seeing him, he started running on which he along with Kiniram chased and caught him and thereafter brought him to the village. In the presence of Sarpanch, Up Sarpanch, Chowkidar and Ratan enquires were made from Dashrath. As he has murdered his son by assaulting with stone, therefore, the matter is reported. Based on this report merg intimation

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Ex.-P/20 was prepared and FIR was registered under Ex.-P/21 for commission of offence under Section 302 of the I.P.C.. The Investigating Officer left for the scene of occurrence, after giving notice (Ex.-P/1) to the Panchas, prepared Panchanama Ex.-P/2 of the body of Murli. The site plan (Ex.-P/3) of the place of occurrence was prepared. The plain soil and blood stained soil was taken into possession under Ex.-P/5. Blood stained stone, weapon of offence, was taken into possession from the place of occurrence under Ex.-P/6. Patwari prepared the site plan under Ex.-P/7 and P/7-A. The dead body of the deceased was sent for postmortem examination to the K.G. Hospital, Raigarh under Ex.-P/12 where Dr. P.K. Mishra (PW-12) after conducting the postmortem, prepared the postmortem report Ex.-P/16. Blood stained clothes of the deceased were taken into possession under Ex.-P/13. The cycle was taken into possession under Ex.-P/14. Clothes of the accused were taken into possession under Ex.-P/15.

After completion of the investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Raigarh who in turn committed the case to the Sessions Judge from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that a truck was coming in a very fast speed from the front side, therefore, in order to save himself he alighted from the cycle. However, cycle was fell down on the stone where there was a pit and on account of falling his son ~~became~~ received injuries. When he stepped down in the pit in order to lift his son, during that period, 3-4

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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villagers came and caught him. He is not mentally fit and in the prison, he received treatment for the mental disease. Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard Shri H.S. Patel, learned counsel for the accused/ appellant and Shri J.D. Bajpaee, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

The homicidal death of deceased Murli is not in dispute.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 Govindram has stated that on the fateful day at about 11 a.m. he was going to the Raigarh market. He saw that one person was attacking a child with the stone and thereafter he ran away on a cycle. The child received injury on the head. He shouted and called Kiniram who was nearby the place of the incident. He along with Kiniram chased and caught the accused and thereafter lodged the report in the police station. PW-2 Kiniram has corroborated the above evidence and stated that he saw that the accused was attacking a child with the stone and thereafter he ran away on a bicycle. The child had died. He along with Govindram chased the accused and caught him. Thereafter they reported the matter to the police. These two witnesses who witnessed the crime in question have stated that the accused was assaulting a child with the stone and thereafter he wanted to run away. They chased and caught him. They witnessed the accused assaulting the deceased his own son. The evidence of these eyewitnesses stands corroborated by PW-3 Subhash who has also stated that he saw that the accused was running away, Kiniram and Govindram chased and caught

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him. Similar is the evidence of PW-4 Ratan. The evidence of these witnesses stands corroborated by the evidence of PW-12 Dr. P.K. Mishra who has stated that on 26-3-95 at about 4 p.m. he conducted the postmortem on the dead body of Murli. There were 4 injuries on the body and on dissection he found that frontal, temporal, parietal bones were fractured and clotted blood was present. He has further stated that cause of death was head injury and on account of clotting of blood in the brain. His report is Ex.-P/16. The stone, weapon of offence, was also taken into possession by the I.O. from the place of occurrence, therefore, in view of the ocular evidence as well as medical evidence, it is established that the accused was author of the crime in question.

Learned counsel for the accused/appellant argued that the accused/appellant is in custody since last more than 11 years, he committed the crime in a fit of anger when the father-in-law of the accused refused to send his wife and in that fit of anger, without any intention, he attacked his own son aged about 5 years with a stone as a result of which Murli died, therefore, offence against the accused does not travel beyond Section 304-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant we have perused the prosecution evidence. PW-8 Gajanand, father-in-law of the accused, has stated that the accused is his son-in-law. On Sunday, the accused came to his house on a bicycle and said that he would take his wife along with him. Even he did not take his meal. He advised him that since there is occasion of 'Chhati' at the residence of his sister, therefore, you take her after some

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time. Thereafter, the accused said that he would not take meal. He would go just now. While going he took his son along with him on a bicycle who was playing outside. After some time, Subhash Sahu came and informed him that his son-in-law has murdered his son Murli.

In view of the above evidence of PW-8 Gajanand, it is evident that when Gajanand, father-in-law of the accused refused to send Anjana, wife of the accused, he became enraged. Even the accused refused to take meal on the request of his father-in-law. After taking his son he left on a bicycle, on the way, in a fit of anger, the accused assaulted his son with the stone, therefore, intention to cause death of his son is not established. However, from the above facts, it can safely be inferred that the accused while assaulting the deceased with the stone had knowledge that by assaulting with stone on the head of a child of 5 years he may likely to cause death of the deceased, therefore, offence under Section 304-II of the I.P.C. is made out against the accused/appellant.

In the result, the appeal partly succeeds. The conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 10 years. It is stated that the accused/appellant is in custody since 1995 which has not been disputed by Additional Public Prosecutor for the State/respondent, thereby he has already undergone the sentence. The accused/appellant be set at liberty forthwith unless required to be detained in any other case.

**Sd/-**
**L.C.BHADOO**
**Judge**

**Sd/-**
**V.K.Shrivastava**
**Judge**

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